No. 16-1466

In The Supreme Court of the United States

MARK JANUS,

Petitioner,

v.

AMERICAN FEDERATION OF STATE, COUNTY, AND MUNICIPAL EMPLOYEES, COUNCIL 31, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF OF AMICI CURIAE WORKERS RASHEEDAH GRAY, OVADHWAH MCGEE, ROSEMARY DAVIS-GREENE, RENEE SYKES, ANDRE SYKES, MARLENE BURTON, MILLARD STEPP, SAMANTHA CORZINE, LESLIE MOORE, EULAR SHERROD, MINNIE BANDY, PARALEE STEWART, ROCHELLE HORANEY, KAREN STRICKLAND, ANNETTE ANDERSON, TRACI CONEY, ETHEL DEMARY, STEVE GILLESPIE, ROY LOFTON, RICHARD STOWELL, DIANE GREEN, MELODY BENJAMIN, SHERYL JONES, BRENDA COLEMAN, ALBERT PIGGEE, ROSIE SMITH, JOHNNY DAVIS, AND GRACE PASCHEL IN SUPPORT OF RESPONDENTS

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IDENTITY AND INTEREST OF AMICI

Amici Rasheedah Gray, Ovadhwah McGee, Rosemary Davis-Greene, Renee Sykes, Andre Sykes, Marlene Burton, Millard Stepp, Samantha Corzine, Leslie Moore, Eular Sherrod, Minnie Bandy, Paralee Stewart, Rochelle Horaney, Karen Strickland, Annette Anderson, Traci Coney, Ethel DeMary, Steve Gillespie, Roy Lofton, Richard Stowell, Diane Green, Melody Benjamin, Sheryl Jones, Brenda Coleman, Albert Piggee, Rosie Smith, Johnny Davis, and Grace Paschel are or were home care workers paid by the state of Illinois Home Services Program to provide care to disabled and elderly individuals in their homes.[1] Amici are the subjects of a lawsuit brought by a few of their coworkers who unsuccessfully sought to recover a refund of $32 million dollars worth of fair-share fees collected by their union pursuant to Illinois state law, in *Riffey v. Rauner*, 2016 WL 3165725 (N.D. IL, 2016); *aff'd*, 873 F.3d 558 (7th Cir. 2017). Amici and their coworkers, a total of fifty-seven individuals, submitted factual affidavits in the lawsuit, describing their reasons for payment of fair-share fees, why they did not object to paying them, and the benefits received thanks to their union representative, SEIU Healthcare Illinois & Indiana (SEIU HCII).[2]

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[1] Amici state that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, as provided in Rule 37.6.

[2] Citations to Amici's and their coworkers' affidavits are to documents filed in support of Defendant SEIU HCII's Memorandum

Amici depict a varied cross-section of the union's personal assistants; they are young and old, live in urban and rural settings, are male and female, and are in some cases related to their care recipients. Amici's accounts differ, but they all describe support for their union and the benefits they have received because of their union. The statements of amici are in striking contrast to Petitioner and his amici's depictions of workers' relationships to their union, their reasons for signing or not signing membership cards, and the union's impact on their jobs and their communities.[3]

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in Opposition to Plaintiffs' Motion for Class Certification in *Riffey v. Rauner*, at 2015 WL 10713341 (Trial Motion, Memorandum and Affidavit) (N.D. Ill. October 2, 2015), and are available at: http://www.nelp.org/worker-declarations-from-riffey-v-rauner-2016.

[3] *See, e.g.*, Brief for California Public-School Teachers, represented by the Center for Individual Rights; Brief of Employees of the State of Minnesota Court System, represented by the Antonin Scalia Law School Supreme Court Clinic; Brief of Rebecca Friedrichs and the Freedom Foundation et al. The Freedom Foundation and its allies continually misrepresent Amici's sister Washington-state based Local SEIU 775's efforts to inform individual providers of their rights not to join or financially support the Union. After the the United States Supreme Court's June 30, 2014, decision in *Harris v. Quinn*, 134 S. Ct. 2618 (2014), Local 775 does not require individual providers to financially support the Union. *See, Fisk et al. v. Inslee et al.*, United States Dist. Court W.D. Wash., No. C16-5889RBL, Order dated Oct. 16, 2017, at 2017 WL 4619223. Since July 2014, all individual providers have been informed in writing that they need not provide any financial support to the Union and that, unless they affirmatively agree to making payments to the Union for a minimum period of time, they can stop financially supporting the Union at any time simply by sending a letter. *Id.*

They write separately to bring their and their coworkers' voices to this case. Many of the challenges to fair-share fees presume that fair-share fee payers dissent from union activity; Amici did not dissent.[4] Amici also write to counter the unsupported claims by Petitioner and his amici, characterizing public sector unions as ideologically-driven and politicized advocacy groups that engage in harassment aimed at confusing and bilking workers. Because many of the cases brought by union opponents like the Freedom Foundation and National Right to Work Legal Defense Foundation (counsel for Petitioner here) seek to overrule longstanding precedent by litigating motions to dismiss based merely on the allegations in a complaint, few facts are before the Court, even as it is charged with deciding novel and fact-based legal claims with high stakes.[5] Amici bring their facts to aid this Court's determination.

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[4] *See, e.g., Mitchell v. Los Angeles Unified School District*, 963 F.2d 258, 262 (9th Cir. 1992) (opt-in system is burdensome and would unduly impede the union in order to protect "the relatively rare species" of employee who is unwilling to respond to the union's notifications but nevertheless has serious disagreements with the union's support of its political and ideological causes.").

[5] *E.g., Friedrichs v. California Teachers Ass'n et al.*, 2013 WL 9825479, fn. 2 (C.D. Cal. 2013) (order granting motion for judgment on the pleadings; court accepts as true the factual allegations in the complaint. The complaint has opinionated allegations not subject to counter facts, including "unions frequently take politically controversial positions that contradict the deeply held beliefs of some teachers," and " . . . other teachers . . . would fare better under an alternative system," and alleging "severe and ongoing infringement of Plaintiffs' rights.") In *Friedrichs*, the defendant teachers unions did not seek judgment on the pleadings,

This brief is submitted with the written consent of the parties under Rule 37.3(a).

SUMMARY OF ARGUMENT

Petitioner's entire case rests on an unsubstantiated and false assumption – namely that fair-share fee payers object to the union. Petitioner makes that argument, asking the Court to overturn a 40-year precedent, with no supported facts. Amici prove that the facts are to the contrary, and contradicted by basic economic principles and the available data. Fair-share fee payers are not ideologically homogenous, as shown by Amici, and many individuals who pay or have paid fair-share fees have no objection to financially supporting their union.

In addition, in Amici's experience, unions bring substantial benefits, and these gains apply regardless of whether an individual worker is a member of the union. The higher wages, health benefits and training provided by the union support the broader community as well; home care consumers receive better care and services thanks to the training and experience of the workers and reduced turnover because of better jobs in

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despite controlling Ninth Circuit and Supreme Court authority, but instead sought to ground their defense in a factual record. But the challengers sought a motion for judgment on the pleadings in the *union defendants'* favor in a rush to judgment. Union Defendants' Memorandum of Points and Authorities in Opposition to Plaintiffs' Motion for Judgment on the Pleadings, 2013 WL 4548425 (C.D. Cal. Aug. 9, 2013).

a growing sector that otherwise suffers from high attrition rates. States like Amici's home state Illinois that have decided to establish public sector collective bargaining in key services like home care, police, and education, also benefit when stronger experienced unions partner with state officials to manage and bring efficiencies to often complex health and home care, education, and public safety systems. More broadly, unionization reduces poverty and inequality across the economy, creating a more stable society and a middle class with opportunities for advancement and economic security.

ARGUMENT

I. Fair-share fee payers are not ideologically homogenous, and many individuals who pay fair-share fees have no objection to financially supporting the union.

Under the long-standing system that was subsequently approved in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), individuals who pay fair-share fees are not ideologically homogenous. Many fair-share fee payers are in favor of union representation and do not object to financially supporting the union. Contrary to the suggestion of Petitioner and supporting amici, it is not necessarily the case that all or even most fair-share fee payers are anti-union or have suffered an individual First Amendment injury.

Amici are current and former home care workers in Illinois who were fair-share fee payers and who did not object to financially supporting their union. Indeed, they very strongly favored unionization. Most simply did not realize that they needed to submit additional paperwork in order to become a formal union member. Amici demonstrate what has become commonly true in the decades that workers and unions have operated under *Abood*: there are many reasons why workers are fair-share fee payers.

Many fair-share fee payers intend to financially support the union. Ms. Grace Paschel, for example, is a 44-year-old home care worker from Chicago. When she began working, the state of Illinois automatically deducted fair-share fees from her wages. Ms. Paschel not only had no objection to providing financial support for the union, she thought that she was already a union member. She was a union supporter and very appreciative of the health benefits the union had won for workers. She thought her financial support made her a union member and was proud to be a union member. When she found out that she needed to complete additional paperwork to formally become a member, she promptly did so. Paschel Aff. ¶¶ 1, 3, 4, 7.

Similarly, Ms. Joyce Lightsey and Mr. Johnny Davis had both been union members at previous jobs and assumed that they were already union members. Ms. Lightsey, a 62-year-old home care worker from Galesburg, Illinois, was happy to support the union since she had worked in non-unionized home care settings where workers were treated poorly, and she believed

that a strong union was necessary if home care workers were to be treated with dignity and respect. Ms. Lightsey found out through volunteering on union campaigns that she needed to complete additional paperwork to become a member, and soon signed a membership card. Lightsey Aff. ¶¶ 1, 4, 5, 7. Mr. Johnny Davis, a 57-year-old home care worker from Chicago, similarly had worked in unionized positions previously and considered himself a "loyal union man." He had thought that he was a union member, and when he became aware that he needed to complete additional paperwork, he promptly signed up for membership. J. Davis Aff. ¶¶ 1, 5. Many of Ms. Lightsey's and Mr. Davis' colleagues similarly had been fair-share fee payers but supported the union, and had thought that they were already members. *See, e.g.*, Ashford Aff. ¶¶ 3, 7; S. Jones Aff. ¶¶ 3, 7; Roberts Aff. ¶ 3; Talkington Aff. ¶ 3.

Many individuals support the union, but have simply not undergone the extra effort to become union members given that a portion of their wages was already going to the union. For example, Ms. Rosie Scott, a 68-year-old home care worker in Harvey, Illinois, believed in a strong union and did not object to financially supporting the union. However, for some time she had not become a union member, "mostly out of laziness." R. Scott Aff. ¶¶ 1, 7. Indeed, many pro-union workers are financially supporting the union without completing extra paperwork, so they have not bothered to take the additional step of signing up for union membership. Ms. Earline Taylor, a 54-year-old home care worker from Evergreen Park, Illinois, believes in

the necessity of a strong union and does not object to financially supporting the union, but simply "[kept] forgetting to sign up" for union membership. Taylor Aff. ¶¶ 1, 4. Ms. Samantha Corzine, a 37-year-old home care worker from Eldorado, Illinois, was a new mother balancing many responsibilities when she started working. She was a fair-share fee payer for some time and has since become a very active member leader, calling and visiting other members and volunteering as a member of the bargaining committee. Corzine Aff. ¶¶ 1, 3, 5.

Far from being ambivalent, many fair share fee payers strongly support the union and become very active union members. For example, Mr. Ovadhwah McGee, a 39-year-old home care worker in Chicago, was a fair-share fee payer the first few years in his position. He is a "big believer" in unions, strongly supported the union, and has been an active leader and organizer, a volunteer member of the union's bargaining committee, and a volunteer at union events in Springfield. McGee Aff. ¶¶ 1, 3, 5, 6. Similarly Ms. Virginia Grant, a 60-year-old home care worker from Charleston, Illinois, was a fair-share fee payer for many years. She had no objection to providing financial support for the union and believed strong union representation was necessary. Ms. Grant believes the union has given her a voice, made her a better home care worker, and made her much more politically aware. She is an active leader and organizer and has volunteered for the union bargaining committee and the union's executive board. Grant Aff. ¶¶ 1, 3, 5, 7.

Mr. Chauncey Collins is a 32-year-old home care worker and was a fair-share fee payer for many years. He is a strong union supporter. When he first started working for the state, he made about $7.35 per hour. Getting by on the low wages was extremely difficult. He had to take on two jobs in order to provide for himself and his sick mother, and they sometimes had to go without three meals a day. In 2015, his union contract provided for a wage rate of $13 per hour. Mr. Collins also is a diabetic and without the health benefits that he credits the union for winning, he would not be able to afford the medicine and equipment he needs to live without going into debt. He attributes his significantly improved quality of life to the union and in his own words, "I truly believe that this Union has done wonderful things." Collins Aff. ¶¶ 1, 3-5. Ms. Virginia Grant similarly has seen her wage raised from below $8 per hour to a wage rate of $13 per hour. In addition, the union has won health benefits that have been a huge help to her, as she suffers from high blood pressure and is at risk of stroke without her medication. Ms. Grant believes these wins would not have been possible without a strong union and is a union supporter. She had no objection to financially supporting the union during her time as a fair-share fee payer. Grant Aff. ¶¶ 4, 3.

Amici and their colleagues who submitted affidavits in *Riffey v. Rauner* are examples of what is true in public sector workplaces across America: fair-share fee payers are often union supporters who do not object to financially supporting the union. These individual examples are consistent with well-developed economic

analysis showing that so-called free riders often support their union but fail to sign up as dues-paying members. *See, e.g.*, Mancur Olson Jr., The Logic of Collective Action, 85-86 (1967).

II. Strong unions benefit the economy and workers like Amici, whether they are members or not.

Over half of the states have made the decision to permit public employees to be represented by unions by authorizing exclusive representation rights to a union, and mandating that all members of the bargaining unit who benefit from the union's efforts to pay their fair share of the costs of these efforts. States and unions like Amici's SEIU HCII have negotiated fair-share fees in their contracts for decades, relying on the Supreme Court's 1977 decision in *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977). *Abood* has permitted states to partner with public sector unions to provide significant supports to much-needed workforces, and improvements to public education, home-based care and services, police and firefighting, and a range of other public services. *Abood*'s holding that requiring nonmembers to pay fair-share fees is permissible under the First Amendment to the United States Constitution should be upheld.

A. States with public sector unions benefit.

Through collective bargaining, members of strong unions are scoring victories that help entire

communities – like safer nurse-staffing levels and quality medical monitoring that help patients in hospitals and in their homes, and smaller classroom sizes that help students. Many states have decided to establish collective representation arrangements to enable them to efficiently and effectively manage the quality of services and the workforce that provides them. *See, e.g.*, 20 ILCS 2405/3(f). As the Court in *Abood* found, these kinds of statutes avoid confusion and inter-union rivalries, as well as the inefficiencies of conflicting demands from different unions. 431 U.S. 209, 217-18 (1977).

In the home care sector in particular, where Amici work, states have a compelling interest in ensuring a strong system for in-home care and services. Over 85% of Americans prefer to receive long-term care and services in their homes. *See, e.g.*, AARP, *Beyond 50.05 Survey 9* (2005).[6] As the population ages and the demand for home care workers increases, the shortages[7] that plague this workforce can be alleviated by a strong

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[6] Available at: https://www.aarp.org/home-garden/livable-communities/info-2005/beyond_50_05_a_report_to_the_nation_on_livable_communities__creating_environments_for_successful_aging.html; *see also*, *AARP, Home and Community Preferences of the 45+ Population 3 (2010)*, available at: https://www.aarp.org/research/topics/community/info-2015/Home-and-Community-Preferences-45Plus.html.

[7] Comm. On the Future Health Care Workforce for Older Americans, Inst. Of Med. Of the Nat'l Acads, *Retooling for an Aging America: Building the Health Care Workforce* 199 (2008), available at: http://www.nationalacademies.org/hmd/reports/2008/retooling-for-an-aging-america-building-the-health-care-workforce.aspx.

union presence to ensure adequate training and benefits for workers that increase retention and enhance quality of care for consumers. *See*, PHI, *Facts 1: Occupational Projections for Direct-Care Workers 2010-2020* 4 (Feb. 2013).[8]

As in Amici's experience, unions promote retention of skilled and experienced workers, an important characteristic of workers that perform key public safety services. *See, e.g.*, Corzine Aff. ¶ 4; Anderson Aff. ¶ 4. These workforce retention and quality of care goals and challenges are beyond any one worker's ability to address. *See, e.g.*, R. Smith Aff. ¶ 4 ("I knew that the fees I paid went to help the Union operate more effectively, including fighting for me when my voice alone was not enough to make a difference."); *see also* Dorie Seavey and Abby Marquand, PHI, *Caring in America: A Comprehensive Analysis of the Nation's Fastest Growing Jobs: Home Health and Personal Care Aides* 67 (2011).[9]

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[8] Available at: https://phinational.org/resource/facts-1-occupational-projections-for-direct-care-workers-2010-2020/; *see also*, *Anastasia Christman and Caitlin Connolly, Surveying the Home Care Workforce, National Employment Law Project (Sept. 2017)*, available at: http://www.nelp.org/publication/surveying-the-home-care-workforce/; Nari Rhee and Carol Zabin, *The Social Benefits of Unionization in the Long-Term Care Sector, in Academics on Employee Free Choice* 83, 89 (John Logan ed. 2009).

[9] Available at: https://phinational.org/wp-content/uploads/legacy/clearinghouse/caringinamerica-20111212.pdf

B. Unions benefit workers like Amici and their peers.

Petitioner and his amici paint a picture of unions as "advocacy groups" that "bully" "harass" and "isolate" non-members, "seize" their dues without consent, and use "abusive and deceptive tactics."[10] That is not at all what Amici fee payers believe or have experienced.

Amici note that the union-provided training enabled them to provide better care and services to their consumers, including skills for communicating with patients with dementia (Corzine Aff. ¶ 4), and an opportunity to meet other personal assistants in an otherwise isolated job. Anderson Aff. ¶ 4. Union-sponsored trainings for home care workers typically include identification of abuse and neglect, first aid and CPR, and specialized care for specific diseases and conditions. *See, e.g.*, *Surveying the Home Care Workforce*, *supra*, at p. 6.

Unions enable workers to form an organization that can improve working conditions and worker well-being, which in turn support a more stable, better trained and healthier workforce, creating higher quality of care and services for the consumers. *Id.* Union contracts typically have job-protection provisions that

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[10] *See, e.g.*, Brief of Rebecca Friedrichs and The Freedom Foundation, et al., which outlines the Freedom Foundation's door-to-door canvassing of union members seeking to get them to opt-out of the union's fair share fees, while at the same time lambasting the union's "unrequested informational onslaught," and "aggressive campaign to keep workers in the dark." Brief at 15, 27. *See also*, Brief of Petitioner Mark Janus, *passim*.

only permit employers to fire a worker for cause; other workers do not have this due process protection. *See, e.g., How today's unions help working people*, *supra*, at 13. And, unions provide discontented workers who would otherwise quit with a means to address job quality concerns and better communicate with their employer. Sherrod Aff. ¶ 5 ("I wanted to be a member because the State kept cutting the hours my son could receive. I felt that I needed someone to help me in my interaction with the State. Since then I have remained a proud Union member and have occasionally worked to recruit other members."); *see also* Patricia N. Blair, *Union Security Agreements in Public Sector Employment*, 60 Cornell L. Rev. 183, 189 (1975); Richard Freeman & James L. Medoff, What Do Unions Do? 94-110 (1984).

Amici all knew that the union was fighting for them – their benefits, their higher wages, and training. *See, e.g.*, Amicus Melody Benjamin states that "the wages I was paid . . . and the benefits I received were all the result of work by the Union." Benjamin Aff. ¶ 3. Denise Brown says, "I realized that all of the raises I had seen came from the work of the Union and that the Union had stopped cuts from the Home Services Program." Brown Aff. ¶¶ 3, 5. Brenda Coleman says "I wanted to pay, because I knew that the Union fought for me," and B. Davis adds, "I had no objection to providing financial support for the Union, especially since I knew that the Union was fighting for me behind the scenes." Davis Aff. ¶ 3; D. Green Aff. ¶ 3 ("I'm all for the Union, I believe the Union is helpful because we

cannot fight by ourselves."); Paschel Aff. ¶ 3 ("I believe there is strength in numbers, and that home care workers can achieve more when we fight together.").

Others echoed the sentiment of Minnie Bandy, who notes, "I believe the Union is like an umbrella, with the Union, I always know that I have some protection for me and my fellow home care workers," Bandy Aff. ¶ 3; Williams Aff. ¶ 3 ("Through the Union, home care workers' voices are heard, and without the Union it would be much harder for home care workers to win wage increases and benefits.").

In home care in particular, workers often do not know that their temporary or part-time job could provide a path to a career; unions provide that pathway. *See, e.g.*, Ruth Matthias et al., Cal. Emp't Dev. Dep't, *Caregiving Training Initiative: Final Process and Outcome Evaluation Report* 101 (2003).[11] A.E. Benjamin et al., *Retention of Paid Related Caregivers: Who Stays and Who Leaves Home Care Careers?*, 48 Gerontologist 104, 106 (2008).

Union workers earn as much as 14 percent more than non-unionized peers in the same job sector. Alex Rowell and David Madland, *Without Strong Unions, Middle-Class Families Bring Home a Smaller Share*,

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[11] Available at: https://healthforce.ucsf.edu/publications/caregiver-training-initiative-final-process-and-outcome-evaluation-report.

Center for American Progress, Sept. 14, 2017.[12] Nonunion workers too benefit from this wage premium, as union standards push up wages and combat wage theft across their sectors. *Id.* at 9.

In Illinois, personal care assistant wages rose from $7.00 to $13.00 per hour from the onset of Amici's HCII union representation in 2003 to 2015, and for the first time workers got union-provided health benefits, paid training, and a grievance procedure with just-cause job protection. *Riffey v. Rauner*, 2016 WL 3165725 (N.D. IL, 2016) (Kelleher Aff. at ¶ 11-17). These wages and benefits are available to members and non-members alike, because Illinois like most states requires exclusive representatives to represent all workers in the bargaining unit regardless of whether they are members of the union. *See, e.g.*, 5 Ill. Comp. Stat. 315/6(d), 315/8. The more than 35,000 individual providers who provide home care to elderly and disabled clients and are represented by HCII's sister local in Washington state have seen similar benefits. When these caregivers formed a union in 2002, they were being paid the state's minimum wage, just a little more than $7 an hour. *Fisk et al. v. Inslee et al.*, U.S. Dist. Ct. W.D. Wash., No. C16-5889RBL (Oct. 16, 2017).[13] Now their wages

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[12] Available at: https://www.americanprogressaction.org/issues/economy/news/2017/09/14/168583/without-strong-unions-middle-class-families-bring-home-smaller-share/.

[13] *See also*, Erica Barnett, *As Labor Unions Weaken Nationwide, this Controversial Seattle Chapter's Clout Keeps Swelling*, Seattle Magazine (Dec. 2017), available at: http://www.seattlemag.com/news-and-features/labor-unions-weaken-nationwide-controversial-seattle-chapters-clout-keeps-swelling.

are at least double that. And they have also bargained for healthcare, retirement, training, paid time off, workers' compensation and other benefits. *Collective Bargaining Agreement Between the State of Washington and Service Employees International Union Healthcare* 775W (2015-2017).[14]

Unionized workers are more likely (94 percent) to have employer-provided health insurance, as compared to their non-union counterparts (67 percent), and union employers contribute 77.4 percent more to health benefits than non-unionized ones. *How today's unions help working people*, *supra*, at 13. Unionized workers also have greater access to paid sick and vacation leave and retirement plans. *Id.* Virginia Grant especially liked the health benefits she received, and knows that "the work of the Union ultimately benefits me." Grant Aff. ¶ 3; *see also*, Corzine Aff. ¶ 6 ("I do not want the fair-share fees I paid returned to me. I feel that the Union used the money I paid to provide benefits like health insurance, dental insurance and everything that we are fighting for."). Neither Petitioner nor his amici have produced evidence of a fair-share fee payer who believes she or he is overcompensated or has offered to return his or her union-earned pay, and opponents have had years and multiple challenges to produce such a person.

Unions are more important than ever – and Americans know it. New Gallup research shows that more

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[14] Available at: https://www.ofm.wa.gov/sites/default/files/public/legacy/labor/agreements/15-17/nse_homecare.pdf.

than 3 in 5 Americans have a favorable view of labor unions. That's the highest level in nearly 15 years – and support is even stronger among young people. Gallup News, *Labor Union Approval Best Since 2003, at 61 Percent*, Aug. 30, 2017.[15]

C. Economies with higher levels of unionization are stronger, with less income inequality and poverty.

Economies with higher levels of unionization have lower levels of poverty overall, even for nonunionized workers, and especially for the working poor. *See, e.g.*, David Brady, Regina S. Baker, and Ryan Finnigan, *When Unionization Disappears: State-Level Unionization and Working Poverty in the United States*, American Sociological Review 78(5) 872-896 (2013). When union membership is high, entire communities enjoy wages that represent a fair return on their work and greater social and economic mobility.

Unions provide a path to the middle class for working people by increasing their income and the economic security of their families. As union membership has decreased because of attacks on working people, income inequality has risen in the U.S. Josh Bivens, et al., *How Today's Unions Help Working People*,

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[15] Available at: http://news.gallup.com/poll/217331/labor-union-approval-best-2003.aspx.

Economic Policy Institute, Aug. 24, 2017.[16] Weakened unions has also meant that middle class workers' share in income has declined, because unions represent workers in the middle of the income distribution. Richard Freeman, Eunice Han, Brendan Duke, and David Madland, *What Do Unions Do for the Middle Class?* Center for American Progress (2016).[17] At the same time, the United States' low-wage workforce has grown to 25 percent of the overall labor force, as unions' decline exacerbates the lack of worker bargaining capacity. Mike Collins, *The Decline of Unions is a Middle Class Problem*, Forbes (March 19, 2015).[18]

When levels of unionization drop, income inequality rises and wages drop for all workplaces. Bruce Western and Jake Rosenfeld, *Unions, Norms and the Rise in U.S. Inequality*, American Sociological Review 76(4) 513-537 (2011) (cataloguing a decline in the "moral economy" and its underlying distributional

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[16] Available at: http://www.epi.org/publication/how-todays-unions-help-working-people-giving-workers-the-power-to-improve-their-jobs-and-unrig-the-economy/.

[17] Available at: https://www.americanprogress.org/issues/economy/reports/2016/01/13/128366/what-do-unions-do-for-the-middle-class/; *see also* Alex Rowell and David Madland, *Without Strong Unions, Middle-Class Families Bring Home a Smaller Share,* Center for American Progress Sept. 14, 2017, available at: https://www.americanprogressaction.org/issues/economy/news/2017/09/14/168583/without-strong-unions-middle-class-families-bring-home-smaller-share/.

[18] Available at: https://www.forbes.com/sites/mikecollins/2015/03/19/the-decline-of-unions-is-a-middle-class-problem/#5e4a5f1b7f2d.

norms as unions decline).[19] The share of income going to the top 10 percent of our society has grown recently as unions falter, and union membership declines is the largest single factor contributing to wage inequality for men. *How Today's Unions Help Working People*, *supra*, at 7, Fig. A.

Extreme income inequality has consequences beyond the individual: it encourages social, political and financial disruption and conflict – rather than stability. Higher levels of economic inequality lead to poor economic growth, diminish educational and housing opportunity, adversely impact health, and encourage financial predation and crisis. *See*, Annie Lowrey, *Inequality May Take Toll on Economic Growth*, The New York Times (Oct. 16, 2012).[20]

Unions boost democracy, an inclusive economy, and shared prosperity. *Abood* rightly permits fair-share arrangements, which enable unions to have the resources they need to work with their members to create these benefits.

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[19] Available at: http://www.epi.org/publication/union-decline-lowers-wages-of-nonunion-workers-the-overlooked-reason-why-wages-are-stuck-and-inequality-is-growing/.

[20] Available at: http://www.nytimes.com/2012/10/17/business/economy/income-inequality-may-take-toll-on-growth.html; *see also* James Galbraith, Inequality (Oxford Univ. Press, 2016); Cingano, F., *Trends in Income Inequality and its Impact on Economic Growth*, OECD Social, Employment and Migration Working Papers, No. 163, OECD Publishing, Paris (2014), available at: http://dx.doi.org/10.1787/5jxrjncwxv6j-en.

CONCLUSION

For the foregoing reasons, the Court should affirm the Seventh Circuit's judgment and should not overturn *Abood*.

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Respectfully submitted,

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